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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re REUBEN R., a Person Coming Under
the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

REUBEN R.,

Defendant and Appellant.

G032030

(Super. Ct. No. DP004501)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Gary
Vincent, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Reversed.

Paoli & Paoli and Sylvia L. Paoli, under appointment by the Court of
Appeal, for Defendant and Appellant Reuben R.

Deborah A. Kwast, Interim Public Defender, James W. Steinberg, Assistant Public Defender, and Paul DeQuattro, Deputy Public Defender, for Defendant Michelle R.

Benjamin P. de Mayo, County Counsel, and Ward Brady, Deputy County Counsel, for Plaintiff and Respondent.

Jacqueline E. Gentry, under appointment by the Court of Appeal, for the Minor.

* * *

Reuben R. appeals from the order terminating parental rights to his son, Reuben. (Welf. & Inst. Code, § 366.26.) One of the issues on appeal is the failure to comply with the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) (ICWA). All parties have stipulated that the juvenile court's order be reversed and the remittitur issued forthwith because the juvenile court failed to make the proper findings regarding notice to the Yaqui Tribe and the child's eligibility or ineligibility for membership in that tribe (Cal. Rules of Court, rule 1439).

We have examined the record and find "[t]here is no reasonable possibility that the interests of nonparties or the public will be adversely affected by [a] reversal" in this case and "[t]he reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement." (Code Civ. Proc., § 128, subds. (a)(8)(A) & (a)(8)(B).) Reversal is in the best interest of the parties because it will avoid prolonged litigation involving the application of ICWA and will allow the juvenile court to ensure that the rights of the Yaqui Tribe are satisfied.

Accordingly, we accept the stipulation and reverse. The juvenile court is directed to conduct a hearing to determine whether ICWA applies. After making the determination, the juvenile court shall promptly hold a new hearing under Welfare and Institutions Code section 366.26, following the procedures of ICWA if applicable, subject

to the parties' right to petition the juvenile court for modification of any prior orders pursuant to Welfare and Institutions Code section section 388. The remittitur shall issue forthwith.¹

SILLS, P. J.

WE CONCUR:

RYLAARSDAM, J.

FYBEL, J.

¹ Appellant has filed a motion to accept additional evidence. In light of the stipulation, the motion is denied as moot.